

Statement of Procedural History and Facts

Appellee, the State of Maine, agrees with Appellant Tyler Blackburn's statement of procedural history and facts, except as follows:

a) Officer Jason Burke testified that the police were dispatched around ten minutes to midnight for a loud party, and upon arrival, from outside the residence, he saw a group of young, teenaged people framed in a picture window, in a room above the garage. (Tr.:5-7.)

b) Through the window the teenagers looked at the police outside the residence, they quickly started clearing dark-colored bottles off the tables, Officer Burke could see a bar area above the window, and some of the young people ducked below the officer's field of vision. (Tr.:8-9.)

c) When the officers were walking up to the front door, Officer Burke saw several people inside the house run across the front door/hall area to another part of the house. (Tr.:10.)

d) The officers knocked on the door, Appellant Blackburn answered it, and upon being asked by the police whether there was underage drinking going on in the house, Blackburn¹ said that there was. (Tr.:11.)

e) The officers entered the house, Blackburn protested, and they told him that there was a crime being committed and that they thought evidence was being destroyed. (Tr.:11, 25.)

f) On cross-examination, Officer Burke was asked whether he felt that "the public was in danger in any way...?" (Tr.:13.) He responded, "That's a hard question to

¹ Blackburn's date of birth is July 25, 1989, and the police therefore had no reason to believe that he might be the guardian or parent of the underage drinkers inside the residence.

answer,” and further responded that, “We felt there was under age drinking at the residence.” (Tr.:13.)²

g) Officer William Andrew’s testimony was similar to that of Officer Burke, including that the officers were called to investigate a loud party or “wild disturbance,” that the officers were in uniform and arrived in a cruiser marked with lights and reflective lettering, and he additionally testified that when he looked in the picture window he saw a young woman fall to the floor, he did not know why, and in his professional experience dealing with underage drinking gatherings, underage drinkers grab things they are not supposed to have and try to hide them. (Tr.:17-18, 20, 23.)

h) Officer Andrew also testified that Blackburn did not physically block the officers’ entry into the residence, and instead he “just dropped his head, and I walked in.” (Tr.:20.) He also testified that a third officer arrived after he and Officer Burke had entered the residence. (Tr.:21-23.)

i) The sole issue raised before the District Court in the Motion to Suppress, and the sole issue before this Court on appeal, is the warrantless entry into the residence. (D.E.; R.; Tr. 3-4, 14, 22-23, 31.)

Argument

I. The Evidence In The Record Supports The District Court’s Findings That Evidence Was Potentially Being Destroyed And That The Officers Had Probable Cause To Believe That Underage Drinkers Were Consuming Alcohol

² The order of the District Court denying the Motion to Suppress states that Officer Burke’s report was admitted into evidence, (Appendix.: Order, dated February 27, 2008), however, both officers’ reports are contained in the Appendix as exhibits to Blackburn’s Memorandum in Support of Motion to Suppress, filed in the District Court, (Appendix). The transcript does not reflect that either report was entered into evidence at the hearing. (Tr.) Officer Burke stated in his report that Ryan Mosley, named in the complaint as a minor allowed to consume alcohol on the premises, was visibly intoxicated, (Appendix: Exhibit 1), and Officer Andrew stated in his report that Ryan Mosley was “extremely intoxicated” and “could barely write his name and date of birth.” (Appendix: Exhibit 2.)

Inside Appellant Blackburn's Residence, And The Court Did Not Err In Denying Blackburn's Motion To Suppress On The Ground That Exigent Circumstances Supported The Warrantless Entry.

Officer Burke and Officer Andrew had probable cause to believe that underage drinking was occurring inside Blackburn's residence, and had reason to believe that evidence was being destroyed. The officers were not sure whether public safety was threatened from what they saw outside the residence, and Officer Andrew saw a young female drop to the floor. The officers' intrusion into the residence took place after knocking and after stating to Blackburn the grounds for their entry, and without force. The public policy of this State, as expressed through the statute and legislative history, demonstrates that the people of Maine consider furnishing a place for minors to consume alcohol to be a serious offense. The District Court did not err in denying the motion to suppress.

Factual findings made on a motion to suppress are reviewed for clear error, while legal conclusions are reviewed *de novo*. State v. Bilynsky, 2007 ME 107, ¶ 16, 932 A.2d 1169, 1173. A warrantless search based on exigency is unreasonable unless it is supported by probable cause and exigent circumstances exist requiring a prompt search, without the delay occasioned by the need for a warrant. Bilynsky, 2007 ME at ¶ 17, 932 A.2d at 1173. Probable cause exists when the officers' personal knowledge of facts and circumstances, in combination with any reasonably trustworthy information conveyed to them, would warrant a prudent person to believe that there is evidence of a crime. Bilynsky, 2007 ME at ¶ 18, 932 A.2d at 1173; State v. Lux, 1999 ME 136, ¶ 10, 740 A.2d 556, 558 (quantum of proof necessary to establish probable cause is less than level

of fair preponderance of the evidence). Exigent circumstances exist when there is an urgent need to conduct a warrantless search, including when evidence is likely to disappear or can easily be destroyed. State v. Smith, 593 A.2d 210, 212-13 (Me. 1991) (citing Schmerber v. California, 384 U.S. 757, 770-71, 86 S.Ct. 1826, 1835-36, 16 L.Ed.2d 908 (1966)). See also State v. Leonard, 2002 ME 125, ¶¶ 12-13, 802 A.2d 991, 993-94 (search of residence immediately after Leonard was firing shots at officers from residence supported by probable cause and exigency, including potential for loss or destruction of evidence). The State must show by a preponderance of the evidence that an exception to the warrant requirement exists. State v. Michael M., 2001 ME 92, ¶ 2, 772 A.2d 1179, 1182.

Here, the evidence supports the District Court's factual finding that evidence was potentially being destroyed inside the residence. Both officers saw teenaged-looking people reacting to the arrival of the officers by sweeping bottles off a table in the area of a bar, and running across the front hall of the residence apparently to disperse from the bar area. Officer Andrew saw a young woman fall to the floor and did not know if she was hurt. Blackburn told the officers that underage drinking was going on inside the house. The officers did not know, from what they saw outside the residence, whether public safety was threatened or whether anyone was in danger inside the house. The officers had probable cause to believe a crime was being committed, and had the exigency of evidence-destruction in progress as they approached the residence. The District Court did not commit clear error in finding potential destruction of evidence, and did not err in holding that the warrantless entry of the residence on the basis of exigency was reasonable under the Fourth Amendment.

In State v. Michael M., 2001 ME 92, 772 A.2d 1179, a police officer patted-down a minor, Michael M., who was smoking a cigarette, to look for more cigarettes, and found an illegal “butterfly knife.” Id. at ¶¶ 1-1, 772 A.2d at 1180. The cigarettes in Michael M.’s possession were contraband because the Legislature made it illegal for him to possess them, and the State carried its burden by a preponderance of the evidence to show that exigent circumstances in the form of potential destruction of evidence relieved the officer from obtaining a warrant. Id. at ¶¶ 11-12, 772 A.2d at 1183. A search of one’s person is protected under the Fourth Amendment to the same degree as is a search of one’s residence, is arguably more intrusive, and Michael M. supports the District Court’s denial of the motion to suppress in this case. See also State v. Kirby, 2005 ME 92, 878 A.2d 499 (officer’s extension into doorway of investigatory detention that began on the deck of Kirby’s home, to prevent defendant from closing door after warning not to enter home by himself, held reasonable under Fourth Amendment; officer’s intent was to maintain safety); Hegarty v. Somerset County, 53 F.3d 1367, 1374-79 (1st Cir. 1995) (in 1983 action competent police officer reasonably could have believed that probable cause existed and that exigent circumstances justified immediate warrantless entry to arrest at night, in remote cabin, for recklessly endangering safety of four campers several hours earlier).

a) Given that the Legislature considers furnishing a place for minors to consume alcohol to be a serious offense, the fact that Appellant Blackburn was charged with a misdemeanor does not render the warrantless entry unreasonable.

Blackburn argues that the misdemeanor offense of furnishing a place for minors to consume alcohol, being committed in view of the police, does not support a

warrantless entry of a residence on the basis of potential destruction of evidence. (Brief of Appellant, at 7-12.) This argument is not supported by law.

First, Welsh v. Wisconsin, 466 U.S. 749, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984), upon which Blackburn bases this portion of his argument, involved the warrantless entry into a home to search for an individual believed to have committed a civil, traffic offense. 466 U.S. at ___, 104 S.Ct. at ___, 80 L.Ed.2d at 738-39. There was no destruction of evidence or criminal activity occurring in view of the police. Id. In addition, the possibility of serious bodily injury resulting from the criminal activity did not exist, as it does in this case, since Welsh was no longer driving when the police entered his home. Id. Factually, Welsh is distinct from this case.

Second, the United States Supreme Court in Welsh based its reasoning in large part on the fact that

[t]he State of Wisconsin has chosen to classify the first offense for driving while intoxicated as a noncriminal, civil forfeiture offense for which no imprisonment is possible. This is the best indication of the State's interest in precipitating an arrest, and is one that can be easily identified both by the courts and by officers faced with a decision to arrest.

Welsh v. Wisconsin, 466 U.S. at ___, 104 S.Ct. at ___, 80 L.Ed.2d at 746 (citations omitted). The Maine Legislature has given serious consideration to underage drinking, and has criminalized the provision of premises for this undertaking – in some cases with felony charges.

The statute prohibiting the furnishing of alcohol to a minor, or allowing the consumption of alcohol by a minor on one's premises, under which Blackburn was convicted, 28-A M.R.S.A. §§ 2081(1)(A), (B), provides criminal penalties, in some

instances mandatory minimum sentences, for furnishing a place for minors to consume alcohol.³ The first offense is a Class D crime, punishable by up to 364 days in jail and a \$2,000 fine. 28-A M.R.S.A. § 2081(B)(1); 17-A M.R.S.A. § 1252(2)(D), § 1301(1-A)(D). If the minor is less than 18 years of age, the mandatory minimum fine is \$1,000. 28-A M.R.S.A. § 2081(1)(B)(2). For persons with prior convictions within a six-year period, the mandatory minimum fine is \$2,000. 28-A M.R.S.A. § 2081(1)(B)(3). A person who furnishes alcohol to minors, or furnishes a place for minors to consume alcohol, commits a Class C felony if the consumption of liquor by the minor “in fact” causes serious bodily injury to, or death of, the minor or any other individual. 28-A M.R.S.A. § 2081(1)(B)(5). This latter section does not require the death or serious bodily injury to occur in the location where the alcohol is consumed. Id.

The Legislature first prohibited the furnishing of liquor to minors or furnishing a place for minors to consume liquor in 1954, and made this activity punishable by a fine of up to \$100 and/or imprisonment of up to 11 months. R.S. ch. 61, § 70 (1954). In 1963 the maximum fine was increased to \$200. P.L. 1963, ch. 246. In 1964 the Legislature revised the statute as 28 M.R.S.A. § 1058, and in 1983 the Legislature first called the offense a Class E crime, P.L. 1983, ch. 14. In 1987, 28 M.R.S.A. § 1058 was repealed as part of “An Act to Recodify Liquor Laws,” and redesignated 28-A M.R.S.A. § 2081. P.L. 1987, ch. 45, §§ A, 3-4. In 1989 classification of the crimes of furnishing liquor to a minor and furnishing a place for minors to consume liquor was increased from Class E to Class D. 28-A M.R.S.A. § 2081(3).

In 2001 the statute was amended to create a felony offense in situations where serious bodily injury results “in fact” from providing liquor to minors or providing

³ A minor is defined as a person who has not reached the age of 21 years. 28-A M.R.S.A. § 2(20).

minors a place to consume liquor. 28-A M.R.S.A. § 2081(5). The House of Representatives originally submitted the bill with a definition of “proximate” rather than “in fact” causation, and this standard was changed to “in fact.” Comm. Amend. A to L.D. 51, No. H-29 (120th Legis. 2001). The broader “in fact” definition does not require the State to prove that the serious bodily injury was the direct result of furnishing the liquor or the place for the minor to consume liquor. See 1 LaFave, Substantive Criminal Law § 6.4(b), at 467-73 (2nd ed. 2003). Finally, in 2005, the Legislature enacted “An Act to Strengthen the Penalties for Furnishing Alcohol to or Allowing Consumption of Alcohol by Minors,” P.L. 2005, ch. 292, § 1(1), which increased the fines for a violation of the statute and changed the age under which the minimum mandatory fine attached from less than 14 years of age to less than 18 years of age, 28-A M.R.S.A. § 2081(1)(A), (B).

These statutory enactments and amendments demonstrate that over the past two decades the Legislature has steadily increased the seriousness of the crimes of furnishing liquor to a minor and furnishing a place for minors to consume liquor. These crimes are serious ones for the purpose of the Welsh analysis, and Welsh does not render the warrantless entry in this case unreasonable. The Legislature is concerned about the possibility of serious bodily injury resulting from underage drinking, and this public policy concern undercuts the reasoning that, under the facts of this case, the warrantless entry should be disallowed as a matter of judicial policy, merely because the crime for which Blackburn was convicted is a misdemeanor.

In addition, in cases decided subsequent to Welsh, the United States Supreme Court has limited that ruling. In Illinois v. McArthur, 531 U.S. 326, 121 S.Ct. 946, 148

L.Ed.2d 838 (2000), the Court held reasonable the actions of police who, with probable cause to believe that McArthur had hidden marijuana in his home, prevented him from entering the home unaccompanied by an officer for two hours while they obtained a search warrant, the execution of which led to misdemeanor charges against McArthur. 531 U.S. at ___, 121 S.Ct. at ___, 148 L.Ed.2d at 846-48. The Court balanced privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable. 531 U.S. at ___, 121 S.Ct. at ___, 148 L.Ed.2d at 848. Considering factors, such as that the police had probable cause to believe evidence of a crime existed in the trailer and good reason to fear that, unless restrained, McArthur would destroy evidence before the police could get a warrant, the restraint was reasonable. *Id.* Distinguishing Welsh v. Wisconsin, the Court stated that the crime in Welsh was nonjailable and restated its reliance on the fact that the “classification of state crimes differs widely among the States [such that] the penalty that may attach to any particular offense seems to provide the clearest and most consistent indication of the State’s interest in arresting individuals suspected of committing that offense.” Illinois v. McArthur, 531 U.S. at ___, 121 S.Ct. at ___, 148 L.Ed.2d at 850-51 (citing Welsh v. Wisconsin, 466 U.S. at 754, 104 S.Ct. 2091, 80 L.Ed.2d at 746 n.14).

In concurrence, Justice Souter stated that the “probability of destruction in anticipation of a warrant exemplifies the kind of present risk that undergirds the accepted exigent circumstances exception to the general warrant requirement.” Illinois v. McArthur, 531 U.S. at ___, 121 S.Ct. at ___, 148 L.Ed.2d at 851. “That risk would have justified the police in entering McArthur’s trailer promptly to make a lawful, warrantless search.” *Id.*

In Brigham City v. Stuart, 547 U.S. ___, 126 S.Ct. ___, 164 L.Ed.2d 650 (2006), the United States Supreme Court distinguished Welsh in a situation where police entered a residence, at night, without a warrant, to stop a minor fight resulting in misdemeanor charges being brought against Stuart. 547 U.S. at ___, 126 S.Ct. at ___, 164 L.Ed.2d at 656. The police arrived at 3 a.m. to the residence in response to a call about a loud party. Id. They saw two juveniles drinking beer in the back yard and saw through a window four adults trying to restrain a juvenile in the kitchen. Id. The juvenile punched one of the adults, causing him to spit blood in the sink. Id. One officer opened the screen door and announced the officers' presence, but in the tumult no one heard him. Id. The officer entered the kitchen and again announced his presence, whereupon the altercation gradually subsided. Id. The officers arrested Stuart (and the other respondents) and charged him with contributing to the delinquency of a minor, disorderly conduct, and intoxication. Id.

Vacating the order suppressing evidence resulting from the entry of the residence, the Court held that the officers' entry into the residence was reasonable under the Fourth Amendment. Brigham City v. Stuart, 547 U.S. at ___, 126 S.Ct. at ___, 164 L.Ed.2d at 659. First, the Court stated that the individual officer's subjective reason for entering the residence, even if it could be neatly unraveled, was irrelevant, as long as the circumstances objectively justified the action. 547 U.S. at ___, 126 S.Ct. at ___, 164 L.Ed.2d at 658. Second, the fact that only a "potential emergency" confronted the officers, in that no one was yet seriously injured, did not diminish the exigency of the situation. 547 U.S. at ___, 126 S.Ct. at ___, 164 L.Ed.2d at 659-60. "Nothing in the Fourth Amendment required them to wait until another blow rendered someone 'unconscious' or

‘semi-conscious’ or worse before entering.’ 547 U.S. at ___, 126 S.Ct. at ___, 164 L.Ed.2d at 659. Third, the Court distinguished Welsh in that there the officers’ only reason for entering the residence was to preserve evidence. Id. Fourth, the manner of entry in Stuart was reasonable, in that the officer announced his presence and attempted to gain the residents’ attention. 547 U.S. at ___, 126 S.Ct. at ___, 164 L.Ed.2d at 660.

McArthur and Stuart support the District Court’s order in this case. Officers Burke and Andrew were not required to wait until one of the teenagers inside Blackburn’s residence – such as Ryan Mosley, who was so intoxicated that he could barely write his name and date of birth, see supra n.2 - became unconscious, or was otherwise injured, to investigate the situation.

b) Furnishing a place for minors to consume alcohol poses a significant risk to public health and safety.

The case-law is replete with instances where underage drinking is linked to other crimes, and provides support for the holding in Stuart that police do not have to wait until a situation is dire in order to respond, as well as for the public policy expressed by the Maine Legislature that seriously penalizes furnishing liquor to a minor and furnishing a place for minors to consume liquor. See e.g. Brigham City v. Stuart, 547 U.S. ___, 126 S.Ct. ___, 164 L.Ed.2d 650 (underage alcohol use in conjunction with committing crimes of contributing to delinquency of a minor, disorderly conduct, and intoxication); State v. Plummer, 2008 ME 22, 939 A.2d 687 (defendant convicted of unlawful sexual contact and furnishing liquor to a minor); State v. Cormier, 2003 ME 154, 838 A.2d 356 (multiple gross sexual assaults committed on 14-year-old victim in conjunction with her being furnished alcohol); Korhonen v. Allstate Insurance Company, 2003 ME 77, 827

A.2d 833 (William Korhonen convicted of unlawful sexual contact and furnishing liquor to minor victim); State v. Pierce, 2001 ME 14, 770 A.2d 630 (defendant convicted of gross sexual assault, unlawful sexual contact, aggravated trafficking or furnishing scheduled drugs, and furnishing liquor for minors); State v. Almurshidy, 1999 ME 97, 732 A.2d 280 (defendant convicted of gross sexual assault, unlawful sexual contact, and furnishing liquor to minor victim; convictions vacated on grounds of erroneous evidentiary rulings); State v. Tapley, 598 A.2d 1190 (Me. 1991) (defendant charged with unlawful sexual contact, assault and furnishing liquor to minor victim); State v. Baker, 502 A.2d 489 (Me. 1985) (defendant charged with manslaughter, OUI, and furnishing liquor to minors).

Given the drinking patterns of adolescents, as well as the impact of alcohol on adolescents, the link between underage drinking and personal injury, as well as criminal activity, is not surprising. The peak years of alcohol initiation are 7th and 8th grade. See U.S. Department of Health and Human Services, The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking, U.S. Department of Health and Human Services, Office of the Surgeon General, 2007 (hereinafter "Surgeon General's Report"), at 6.⁴ When teenagers drink, they typically engage in binge drinking, namely, five or more drinks on one occasion six times a month, whereas drinkers age 26 or older consume an average of two or three drinks nine times a month. Id. at 6-7. Adolescents are more sensitive than adults to the stimulating effects of alcohol and less sensitive to some of the adverse effects of acute alcohol intoxication, such as sedation, hangover, and

⁴ The Surgeon General's report, found at , <http://www.surgeongeneral.gov/topics/underagedrinking/calltoaction.pdf>, cites to numerous studies that support the conclusions contained in the report, and in this brief, but those citations have been omitted from this brief for the sake of brevity. All the citations are contained in the report, found at the above hyperlink.

loss of muscular coordination, and this difference in sensitivity likely makes adolescents more vulnerable to the harmful effects of alcohol. Id. at 24. Adolescents can drink more than adults before falling asleep or losing muscular coordination, and are therefore more likely than adults to engage in activities, such as driving, when they are too impaired to perform them safely. Id. at 24-25. Each drink increases impairment more for adolescents than for adults⁵, and adolescents are more likely to drink to the point of coma. Id. at 25.

Overall morbidity and mortality rates increase 200 percent between middle childhood and late adolescence/early adulthood, attributable largely to risk-taking, sensation-seeking, and erratic behavior that follows the onset of puberty and which contributes to violence, unintentional injuries, risky sexual behavior, homicide and suicide. See Surgeon General's Report, at 10. Underage drinking is a leading contributor to death from injuries, which are the main cause of death for people under age 21. Id. About 5,000 people per year under age 21 die from alcohol-related injuries involving underage drinking: approximately 1900 of these are from motor vehicle crashes, about 1600 result from homicides, and about 300 result from suicides. Id.

Underage drinking also increases the risk of physical and sexual assault, is associated with academic failure, illicit drug use, with tobacco use, and can cause a range of physical consequences, including death by alcohol poisoning. See Surgeon General's Report, at 10-11. It can cause alterations in the structure and function of the developing brain, which continues to mature into the mid-to-late twenties, and can create secondhand effects that put others at risk, such as OUI-related motor vehicle crashes. Id. at 15, 19-21, 24-26. Drinking before the age of 15 is also linked with life-long substance abuse

⁵ The study that reported this finding is specific with regard to driving, but likely would seem to hold true with other activities, as well.

issues and children of alcoholics are between four and ten times more likely to become alcoholics than children from families with no alcoholic adults, in part because alcoholism has a strong genetic component. Id. at 12-14, 24.

With regard to decision-making, differences between adolescent and adult decision-making are most marked in situations with heightened social or emotional overtones. See Surgeon General's Report, at 20. Such contexts likely intensify the innate adolescent drive for novelty and sensation seeking, with the result that adolescents may be more likely to make decisions that place themselves at greater risk when in emotionally charged settings, including in the presence of peers. Id. The portion of the brain that controls judgment, impulse-control, reasoning and self-regulation, namely the frontal cortex, matures later than the limbic system, which regulates emotions and is associated with adolescent reduced sensitivity to risk. Id. Stress, including stress from social situations involving peers, is linked to increased alcohol consumption. Id. at 21. Given the reduced ability that adolescents have to exercise judgment and to control impulses in light of their immature brain development, and given the stressful social situations in which adolescents often find themselves by dint of their burgeoning independence, it is not surprising that underage drinking leads to harmful and criminal behavior.

This is borne out by recent deaths in Maine involving underage drinking. In May of 2008, in Androscoggin County Superior Court docket no. CR-07-1159, Larando Sweeting pleaded guilty to felony furnishing liquor to a minor in connection with the alcohol poisoning death of 18-year-old Adam Beggs. Sweeting had bought a half-gallon of vodka and a fifth of whiskey with money pooled from underage drinkers at his

apartment. After Beggs drank about three-quarters of the vodka in a continuous stream, Sweeting bowed down to him in a show of admiration. Sweeting told police that Beggs also drank about half the bottle of whiskey. Also in May of 2008, in Cumberland County Superior Court docket nos. CR-08-189 and CR-08-131, Anthony Lord and Sean Meehan were convicted of furnishing liquor to a minor after 19-year-old Adam Baxter died from choking on his own vomit resulting from chugging rum and vodka.

Under the facts of this case, it was a civil violation for the minors to consume or possess alcohol, and it was a crime for Blackburn to furnish a place for them to consume alcohol. Exigency existed in the potential destruction of evidence, as well as the possibility of personal injury. The public policy of this State, as expressed in the statute and legislative history, demonstrates that furnishing a place for minors to consume alcohol is a serious offense with definite health and public safety threats. The District Court did not err in denying the motion to suppress.

c) Case-law from other jurisdictions does not undermine the ruling of the District Court denying the motion to suppress.

Blackburn cites, (Brief of Appellant, at 8-12), to decisions from other jurisdictions, decided in reliance on Welsh v. Wisconsin, to support his argument that the warrantless entry in this case was unreasonable. In City of Fargo v. Lee, 580 N.W.2d 580 (N.D. 1998), the police entered a fraternity house after responding to a complaint of a loud party, seeing beer being thrown out of the window of the house, and pounding on the door such that it swung open revealing intoxicated minors just inside the door. Id. at 581. No one in that case was charged with furnishing a place for minors to consume liquor, because North Dakota does not have such a statute, see ND Title 5 Alcoholic

Beverages, ch. 5-01, and the North Dakota Court held that the warrantless entry and search were unreasonable. 580 N.W.2d 580. Similarly, in City of Jamestown v. Dardis, 618 N.W.2d 495 (N.D. 2000), police arrested Dardis for minor in possession of alcohol and disorderly conduct, and the court reversed the trial court's findings of consent to enter and exigency based on the prior consent to enter. Id. at 10-19. Again, North Dakota does not have a statute making it a crime to furnish a place for minors to consume alcohol, and these cases are irrelevant to this appeal.

Commonwealth v. Roland, 637 A.2d 269 (Pa. 1994), is factually distinguishable from this case in that the police there did not testify that they had any information, prior to entering Roland's residence, that he had furnished beer and liquor to the minors – the alcohol-related offense with which he was charged. Id. at 271. Instead, the police saw what they believed to be underage drinking inside the residence and had information from a third party to that effect. Id. at 270-71. Underage drinking was merely a “summary offense” in that case. Id. at 271. Here, the crime of furnishing a place for minors to consume alcohol is a Class D crime, and the officers saw before they approached the residence what they had reason to believe was underage drinking and saw a young woman fall to the floor for an unknown reason.

Two justices on a five-justice panel additionally dissented in the Roland case.

The dissent stated that

Nowhere in Welsh does the Court provide a definition of what constitutes a minor offense for the purposes of this analysis. The Court, in dictum, noted that several states have limited the exigent circumstances exception to those cases involving felonies. Other states, the Court noted, allowed the exigent circumstance exception where the underlying offense was a misdemeanor.

637 A.2d at 275. This language supports exactly the serious manner in which furnishing a place for minors to consume alcohol is treated in Maine, whether in misdemeanor or felony form.

Blackburn also cites to State v. Othoudt, 482 N.W.2d 218 (Minn. 1992), in which the defendant was charged with driving under the influence after he and his wife were involved in an accident, and the police went to his home to investigate immediately after the accident and entered the home without a warrant. Id. at 221. In that case, the state did not argue exigency, and instead relied on consent and emergency aid. Id. at 223. In dictum, the Minnesota Court stated that under Minnesota jurisprudence and Welsh, exigent circumstances would not have supported a warrantless entry into a home for a lesser offense than a felony. Id. at 223-24. The United States Supreme Court has not interpreted Welsh this way in the past two decades. Othoudt is factually distinct from this case and the court's discussion of Welsh is dictum, as well as being an inaccurate predictor of future Supreme Court jurisprudence; therefore, the case provides no guidance in this appeal.

Similarly, State v. Bessette, 21 P.3d 318 (Wash. App. Div. 3 2001), provides no instruction. The facts in that case involved a minor in possession of alcohol running into a home when the police arrived. Id. at 319. The court concluded, as a matter of law, that a minor in possession of alcohol was not a grave offense. Id. at 319. The court was neither construing the current Maine statute governing furnishing a place for minors to consume alcohol nor addressing facts similar to those present in this appeal, and its legal construction is irrelevant in this case.

People v. Eden, 615 N.E.2d 1224 (Ill. App. 4 Dist. 1993), similarly involves facts different from the facts of this case. There, people inside the residence did not know the police were present until the officers had knocked, and the court found no potential for destruction of evidence. Id. at 1231. The officers also did not see anyone inside the residence fall to the floor, as Officer Andrew did in this case. People v. Eden provides no guidance in this case.

d) Securing the residence while obtaining a warrant was not a viable alternative under the facts of this case.

Finally, Blackburn asserts that the police should have secured the residence while obtaining a warrant. This action would not have prevented the destruction of evidence inside the residence or protected against the possibility of serious bodily injury resulting from the illegal consumption of alcohol or furnishing a place for minors to do so. Any police action to secure evidence or assess the condition of the underage drinkers would have necessitated entry into the residence, which action is the sole issue challenged on appeal. In addition, requiring police to obtain a warrant under the circumstances of this case would likely make enforcement of the statute prohibiting furnishing a place for minors to consume liquor impossible, since this crime most often occurs in residences and under circumstances where police have no advance notice. The Legislature considers this crime to be a serious one, as evidenced by the statute and the legislative history. The judgment of the District Court should be affirmed.

Conclusion

Because the District Court did not commit clear error in its factual findings, and did not commit legal error in finding the warrantless entry reasonable under the

destruction-of-evidence exigency exception to the warrant requirement, Appellee, the State of Maine respectfully requests that this appeal be denied, and that the order of the District Court denying the motion to suppress be affirmed.

Dated: August , 2008

Julia A. Sheridan
Assistant District Attorney
Bar Number 6921

Certificate of Service

I, Julia A. Sheridan, Assistant District Attorney for Cumberland County, hereby certify that I have this date caused two copies of the foregoing BRIEF OF APPELLEE to be served upon Appellant Tyler Blackburn's attorney of record, Susan A. Faunce, Esq., by mailing them to:

Susan A. Faunce, Esq.
129 Lisbon Street
PO Box 961
Lewiston, ME 04243-0961

Dated at Portland, Maine this day of August, 2008.

Julia A. Sheridan
Assistant District Attorney
Bar Number 6921